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Susan P. Cueto

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/077,173
Applicant : Brady Esch, et al.
Filed : February 15, 2002
Art Unit : 3731
Examiner : Kevin Truong

Docket No.: : CARDE.59561
Customer No. : 27629

Mail Stop 16
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR REFUND
(IMPROPER CHARGE OF DEPOSIT ACCOUNT)

I. REFUND REQUEST

This is a request for a refund, with respect to the charge to Deposit Account No. 21-0800, shown on the statement dated February 7, 2005, for a two month extension fee for the above identified application.

II. FEES CHARGE FOR WHICH REFUND REQUESTED

A two (2) month extension term of \$225.00 was charged to Deposit Account No. 21-800. A total refund request of \$225.00 is requested.

III. EXPLANATION OF WHY CONTESTED CHARGE IS IN ERROR

We received an Office Action dated June 25, 2005 in which a response was due on or before September 25, 2005. We filed a response on September 22, 2005, which included a Certificate of Mailing under 37 C.F.R. §1.8. Copies of the documents are enclosed for your review, along with the PTO stamp postcard showing receipt. We therefore filed our response on time and no fee should have been charged.


IV. MANNER OF REFUND

Please make refund by crediting Deposit Account No. 21-0800.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By:


Gunther O. Hanke
Registration No. 32,989

GOH:spc
200 Oceangate, Suite 1550
Long Beach, CA 90802
Telephone: (562) 432-0453
Facsimile: (562) 435-6014
Customer No. 27629



**United States
Patent and
Trademark Office**



Deposit Account Statement

Requested Statement Month: February 2005
Deposit Account Number: 210800
Name: FULWIDER PATTON LEE & UTECHT, LLP
Attention:
Address: 200 OCEANGATE, SUITE 1550
City: LONG BEACH
State: CA
Zip: 90801-5615

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
02/07	1	10077173	<i>CARDE.59561</i>	2252	\$225.00	\$1,218.50
02/11	54	E-REPLENISHMENT		9203	-\$1.00	\$1,219.50
02/11	55	E-REPLENISHMENT		9203	-\$7,920.00	\$9,139.50
02/14	45	78272884	DAWSO.64613	6002	-\$100.00	\$9,239.50
02/15	419	78566984	BRENNH.70117	7001	\$325.00	\$8,914.50
02/15	442	78566989	BRENNH.70069	7001	\$325.00	\$8,589.50
02/15	695	78567128	BRENNH.70049	7001	\$325.00	\$8,264.50
02/15	706	78567137	BRENNH.70068	7001	\$325.00	\$7,939.50
02/16	1612	78568457	BRENNH.70050	7001	\$325.00	\$7,614.50
02/16	1654	78568483	BRENNH.70051	7001	\$325.00	\$7,289.50
02/22	3	10452417		2201	\$44.00	\$7,245.50
02/25	722	78574541	STAND.70483	7001	\$325.00	\$6,920.50
02/28	167	11064251	WEALM.70565	2011	\$150.00	\$6,770.50
02/28	168	11064251	WEALM.70565	2111	\$250.00	\$6,520.50
02/28	169	11064251	WEALM.70565	2311	\$100.00	\$6,420.50
02/28	2005	78576350	DIASP.70482	7001	\$650.00	\$5,770.50
		START BALANCE	SUM OF CHARGES	SUM OF REPLENISH	END BALANCE	
		\$1,443.50	\$3,694.00	\$8,021.00	\$5,770.50	

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AMENDMENT

Client ID/Matter No.: CARDE.59561

Date Mailed: September 22, 2004

Date Due: September 25, 2004

Applicant: Brady Esch, et al.

Application No. 10/077,173

Filed: February 15, 2002

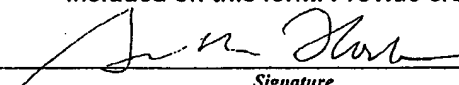
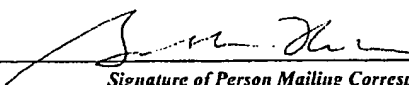
Title: FLOW-THROUGH AORTIC FLOW DIVIDER FOR
CEREBRAL AND CORONARY EMBOLIC PROTECTION

Documents enclosed:

1. Amendment Transmittal (1 pg);
2. Amendment (6 pgs);
3. Terminal Disclaimer (1 pg) and
4. Acknowledgement Postcard.

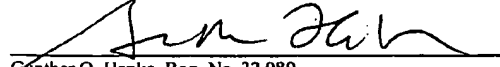


The U.S. Patent and Trademark Office Mail Room stamp hereon
acknowledges receipt of the items indicated above on September 27, 2004.
shown.

AMENDMENT TRANSMITTAL LETTER (Small Entity)				Docket No. CARDE.59561	
Applicant(s): Brady Esch, et al.					
Application No. 10/077,173	Filing Date Feb. 15, 2002	Examiner Kevin Truong	Customer No. 27629	Group Art Unit 3731	Confirmation No.
Invention: FLOW-THROUGH AORTIC FLOW DIVIDER FOR CEREBRAL AND CORONARY EMBOLIC PROTECTION					
<u>COMMISSIONER FOR PATENTS:</u>					
Transmitted herewith is an amendment in the above-identified application.					
<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27					
The fee has been calculated and is transmitted as shown below.					
CLAIMS AS AMENDED					
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	16 -	24 =	0 x	\$9.00	\$0.00
INDEP. CLAIMS	1 -	2 =	0 x	\$43.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0.00
<input checked="" type="checkbox"/> No additional fee is required for amendment. <input type="checkbox"/> Please charge Deposit Account No. _____ in the amount of _____ <input type="checkbox"/> A check in the amount of _____ to cover the filing fee is enclosed. <input checked="" type="checkbox"/> The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 21-0800 . <input checked="" type="checkbox"/> Any additional filing fees required under 37 C.F.R. 1.16. <input type="checkbox"/> Any patent application processing fees under 37 CFR 1.17. <input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached. WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.					
 _____ Gunther O. Hanke			Dated: September 22, 2004		
cc:			I certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on September 22, 2004 . (Date)  _____ Signature of Person Mailing Correspondence Gunther O. Hanke _____ Typed or Printed Name of Person Mailing Correspondence		

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 22, 2004.


Günther O. Hanke, Reg. No. 32,989

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/077,173
Applicant : Brady Esch, et al.
Filed : February 15, 2002
Art Unit : 3731
Examiner : Kevin Truong

Docket No.: : CARDE.59561
Customer No. : 27629

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT

Dear Sir:

This Amendment is responsive to the Office Action of June 25, 2004, the response for which is due September 25, 2004. Entry of the following amendment is respectfully requested.

Claims start on page 2

Remarks start on page 6

AMENDMENTS TO THE CLAIMS:

The listing of claims will replace all prior versions, and listings, of claims in the application:

Please cancel without prejudice claims 17-24.

LISTING OF CLAIMS:

Claim 1 (original): An aortic catheter for cerebral and coronary embolic protection comprising:

an elongated catheter shaft having at least one perfusion lumen extending therethrough;

a deployable aortic flow divider mounted to the catheter shaft; the aortic flow divider having an upper surface and a lower surface; and

at least one flow-through orifice through the aortic flow divider from the upper surface to the lower surface.

Claim 2 (original): The aortic catheter of claim 1, wherein the aortic flow divider comprises an inflatable member.

Claim 3 (original): The aortic catheter of claim 2, wherein the catheter shaft comprises an inflation lumen in fluid communication with the inflatable member.

Claim 4 (original): The aortic catheter of claim 1, wherein at least one flow-through orifice comprises two flow-through orifices through an upstream end of the aortic flow divider.

Claim 5 (original): The aortic catheter of claim 4, wherein the flow-through orifices have a diameter of approximately 0.010 to 0.0250 inches.

Claim 6 (original): The aortic catheter of claim 4, wherein the flow-through orifices have a diameter of approximately 0.050. to 0.0100 inches.

Claim 7 (original): The aortic catheter of claim 1, wherein the catheter shaft comprises one perfusion lumen extending from a proximal end of the catheter shaft to at least one arch perfusion port and at least one corporeal perfusion port.

Claim 8 (original): The aortic catheter of claim 7, wherein the at least one arch perfusion port discharges above the upper surface of the aortic flow divider and the at least one corporeal perfusion port discharges below the lower surface of the aortic flow divider.

Claim 9 (original): The aortic catheter of claim 7, wherein the at least one arch perfusion port and the at least one corporeal perfusion port are configured to provide a fluid flow ratio in the range of approximately 1:2 to approximately 1:4.

Claim 10 (original): The aortic catheter of claim 1, wherein the catheter shaft comprises an arch perfusion lumen extending from a proximal end of the catheter shaft to at least one arch perfusion port and a corporeal perfusion lumen extending from the proximal end of the catheter shaft to at least one corporeal perfusion port.

Claim 11 (original): The aortic catheter of claim 10, wherein the at least one arch perfusion port discharges above the upper surface of the aortic flow divider and the at least one corporeal perfusion port discharges below the lower surface of the aortic flow divider.

Claim 12 (original): The aortic catheter of claim 1, wherein the aortic flow divider is configured to partition the lumen of the aortic arch longitudinally into a first fluid flow channel in fluid communication with the aortic arch vessels and a second fluid flow channel in fluid communication with the patient's corporeal circulation.

Claim 13 (original): The aortic catheter of claim 1, wherein the aortic flow divider is configured to divert emboli downstream to the patient's corporeal circulation.

Claim 14 (original): The aortic catheter of claim 1, wherein the elongated shaft is sized and configured to be inserted directly into the aorta through an aortotomy incision.

Claim 15 (original): The aortic catheter of claim 1, wherein the elongated shaft is sized and configured to be inserted into the aorta through a peripheral artery insertion site.

Claim 16 (original): The aortic catheter of claim 1, wherein at least a portion of the elongated shaft is reinforced with a wire coil.

Claim 17 (cancelled):

Claim 18 (cancelled):

Claim 19 (cancelled):

Claim 20 (cancelled):

Claim 21 (cancelled):

Claim 22 (cancelled):

Claim 23 (cancelled):

Claim 24 (cancelled):

REMARKS

Claims 1-16 remain pending. Reconsideration of the application is respectfully requested.

Applicants affirm election without traverse of claims 1-16 for consideration on the merits.


Claims 1-4, 7, 8, and 10-15 were rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-50 of U.S. Patent No. 6,371,935. Applicants submit herewith a terminal disclaimer to overcome the rejection.

In light of the above amendments and remarks Applicants earnestly believe the application to now be in condition for allowance and respectfully request that it be passed to issue.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By: _____


Gunther O. Hanke

Registration No. 32,989

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Long Beach, CA 90802
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Facsimile: (562) 435-6014
Customer No. 27629

**Terminal Disclaimer To Obviate A Double
Patenting Rejection Over A Prior Patent**

Docket No.
CARDE.59561

In Re Application Of: **Brady Esch, et al.**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/077,173	Feb. 15, 2002	Kevin Truong	27629	3731	

Invention: **FLOW-THROUGH AORTIC FLOW DIVIDER FOR CEREBRAL AND CORONARY EMBOLIC
PROTECTION**

Owner of Record: **Cardeon Corporation**

COMMISSIONER FOR PATENTS:

The above-identified owner of record of a **100** percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. **6,371,935**. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors and/or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney of record.

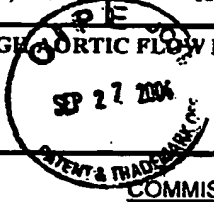
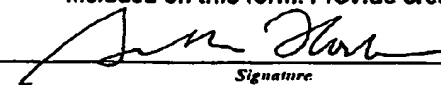


Signature

Dated: **September 22, 2004**

Gunther O. Hanke
Typed or Printed Name

- ☒ Terminal disclaimer fee under 37 C.F.R. 1.20(d) included.
☒ PTO suggested wording for terminal disclaimer was unchanged.
☐ Certification under 37 C.F.R. 3.73(b) is required if terminal disclaimer is signed by the assignee.

JPW ST-1

AMENDMENT TRANSMITTAL LETTER (Small Entity)				Docket No. CARDE.59561	
Applicant(s): Brady Esch, et al.					
Application No. 10/077,173	Filing Date Feb. 15, 2002	Examiner Kevin Truong	Customer No. 27629	Group Art Unit 3731	Confirmation No.
Invention: FLOW-THROUGH AORTIC FLOW DIVIDER FOR CEREBRAL AND CORONARY EMBOLIC PROTECTION					
 COMMISSIONER FOR PATENTS:					
Transmitted herewith is an amendment in the above-identified application.					
<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27					
The fee has been calculated and is transmitted as shown below.					
CLAIMS AS AMENDED					
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TOTAL CLAIMS	16	24	0 x	\$9.00	\$0.00
INDEP. CLAIMS	1	2	0 x	\$43.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0.00
<input checked="" type="checkbox"/> No additional fee is required for amendment.					
<input type="checkbox"/> Please charge Deposit Account No. _____ in the amount of _____					
<input type="checkbox"/> A check in the amount of _____ to cover the filing fee is enclosed.					
<input checked="" type="checkbox"/> The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 21-0800.					
<input checked="" type="checkbox"/> Any additional filing fees required under 37 C.F.R. 1.16.					
<input type="checkbox"/> Any patent application processing fees under 37 CFR 1.17.					
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.					
WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.					
 _____ Signature Gunther O. Hanke			Dated: September 22, 2004		
Adjustment date: 05/02/2005 SDIRETA1 02/07/2005 DBROOKS 00000001 210800 10077173 01 FC:2252 225.00 CR			<div style="border: 1px solid black; padding: 5px;"><p>I certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" (37 CFR 1.8(a)) on September 22, 2004 .</p><p style="text-align:center">(Date)</p><p style="text-align:center"> _____ Signature of Person Mailing Correspondence</p><p style="text-align:center">Gunther O. Hanke 225.00 DA</p><p style="text-align:center"><small>Typed or Printed Name of Person Mailing Correspondence</small></p></div>		
cc:					

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